IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2006

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THE HON'BLE MR.JUSTICE P.JYOTHIMANI

Writ Petition No.31796 of 2006

S.Maaliyathri .. Petitioner

vs.

The Commissioner
Pallavaram Municipality
(E) Cromepet
Chennai - 600 044 .. Respondent

This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the respondent pertaining to the impugned order of suspension in Na.Ka.No.8082/2005/H1, dated 15.4.2006 and quash the same.

For petitioner : Mr.N.Kolandaivelu

For respondent : Mr.A.Edwin Prabhakar
Government Advocate

O R D E R

The writ petition is filed against the order of the respondent dated 15.4.2006 under which the respondent has placed the petitioner under suspension by invoking power under Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It also states that by virtue of Rule 53(3) of the Fundamental Rules, since the petitioner has not stayed in the place fixed, he is not eligible for subsistence allowance.

2. This order is challenged by the petitioner on various grounds including that while invoking deemed suspension power under Rule 17(e) (2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, it should be specifically stated that it is from the date of the arrest, whereas, the impugned order, which is stated on 15.4.2006, states that even though the petitioner was arrested on 4.4.2006 on the basis of the complaint given by his wife under Section 498(A) and 494 of Indian Penal Code, the order by referring to the communication of the Sub-Inspector of Women Police Station,

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dated 10.4.2006 only reads as if deemed suspension has come into effect from 15.4.2006. Therefore, according to the petitioner, it cannot be presumed to be deemed suspension under Rule 17(e) (2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The order is also challenged on another ground, namely, that it does not disclose as to the place of headquarters in which the petitioner is to remain. In view of non-disclosure of the headquarters of the petitioner, it is only natural that the petitioner is entitled for subsistence allowance. However, the impugned order states by invoking Rule 53(3) of the Fundamental Rules that the petitioner is not living within the headquarters, since he was arrested and detained in a prison, which is away from the headquarters and therefore, the petitioner is not entitled for subsistence allowance under Rule 53(3) of the Fundamental Rules. Therefore, according to the petitioner, inasmuch as the place of headquarters has not been mentioned, the impugned order of suspension is against the code. The impugned order is also challenged on another ground that the impugned order has not mentioned about the public interest. On the other hand, the respondent has filed a counter-affidavit wherein it is specifically stated that it is based on the complaint given by the wife of the petitioner, he was arrested on 4.4.2006 and remanded to judicial custody by the Judicial Magistrate, Tambaram and lodged in a Central Prison, Chennai. The factum of arrest of the petitioner and having kept him under prison for more than 48 hours was intimated by the Sub-Inspector of Women Police Station by the letter dated 10.4.2006 and the same was received by the respondent on 15.4.2006 and immediately on the date of receipt, deemed provision was invoked. According to the respondent, once it is admitted that the petitioner was imprisoned on 4.4.2006, deemed provision will come into effect when the order is passed on 15.4.2006, the date on which the respondent being the employer come to know about the arrest.

3. In respect of the payment of subsistence allowance, the respondent states in the counter-affidavit that by virtue of Rule 53 (3) of the Fundamental Rules mentioning Sub Rule 3, it is wrongly mentioned as 31, which is typographical error. Learned counsel for the respondent would further state that as per the said Rule 53(3), there is no compulsion on the part of the employer to pay subsistence allowance, if the petitioner does not reside in the headquarters.

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4. I have heard the learned counsel for the petitioner and the learned Government Advocate who takes notice for the respondent.

5. First of all, as far as the power of the respondent in invoking deemed suspension under Rule 17(e) (2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, it is specifically stated as follows:

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> "(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this rule."

6. Therefore, a reading of the provision shows that whether the employer exercise their power under Rule 17(e) (2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or not, the deemed suspension comes into effect from the date when the person was arrested and detained in prison. The order passed by the employer is only a formality and even otherwise, the deemed suspension has come into effect. Therefore, I am of the considered view that the contention raised on behalf of the petitioner that unless the order specifically states that the suspension is deemed to be effected from the date of the arrest, is untenable.

7. As far as the payment of subsistence allowance is concerned, it is relevant to extract Rule 53(3) of the Fundamental Rules, which is stated as follows:

> "(3) No payment under sub-rule (1) shall be made unless the Government servant continues to reside in the place fixed from time to time, by the authority which made or which deemed to have made the order of suspension."

8. A reading of the said Rule shows that residing in a particular place is as per the direction of the employer, who has got a right to make such direction from time to time. A reading of the impugned order of suspension shows that the respondent has never informed the petitioner to reside in a particular place. Therefore, there is no question of violation of the place of residence stipulated by the employer. Even otherwise, when admittedly the petitioner was imprisoned and is undergoing jail, that is placed outside the headquarters, there is no use for mentioning such place in which the petitioner should reside. In my considered view, that apart, from the facts and circumstances, when the impugned order does not stipulate the place of residence during the period of suspension, denying the subsistence allowance on that ground is not justifiable.

9. In view of the same, while holding that the order of suspension is valid in law as per Rule 17(e) (2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the respondent is directed to pay subsistence allowance to the petitioner in accordance with the provisions, irrespective of the fact.

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10. The writ petition stands ordered in the above terms. No costs. Consequently, connected M.P.Nos.1 and 2 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Commissioner
Pallavaram Municipality
(E) Cromepet
Chennai - 600 044

+ 1 cc to Mr. N. Kolandaivelu, Advocate SR No. 42655

SMV(CO)
SR/6.10.2006

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